HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.179 of 2007

Between:

The Chairman & Correspondent,
Sri Anantha Pradmanabha Arts,
Science and Commerce College, Vikarabad,
Ranga Reddy District and another

... Appellants

And

Gopal Kishan and three others

... Respondents

::JUDGMENT::

Counsel for the appellants : Shri Y. Rama Rao

Counsel for respondent No. 1 : Shri Sadu Rajeswara Reddy

February 22, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 5-2-2007 passed by the learned Single Judge in WPMP. No. 2261 of 2007 in Writ Petition No. 1791 of 2007, whereby he directed non-petitioner Nos.4 and 5 in the writ petition (the appellants herein) to reinstate the writ petitioner (respondent No.1 herein) as per the direction given by Regional Joint Director for Collegiate Education, Warangal (respondent No.4 herein) vide proceedings Rc.No.976/A1/2006, dated 27-10-2006.

A perusal of the record shows that vide notice dated 8-

6-2006, the management of Sri Anantha Padmanabha Arts, Science and Commerce College, Vikarabad (Ranga Reddy District) (for short, 'the college') initiated disciplinary action against respondent No.1, who was holding the post of Superintendent, on the allegation of financial misdemeanour in the purchase of computer stationery for the year 2005-06. After one month, Chairman and Correspondent of the college (appellant No.1 herein) passed order dated 8-7-2006 incorporating therein the resolution passed by the managing committee of the college for suspension of respondent No.1.

Respondent No.1 challenged the order of suspension by filing an appeal before respondent No.4, who issued proceedings dated 27-10-2006 for reinstatement of respondent No.1. For the sake of convenient reference, the relevant portions of those proceedings are reproduced below:

> "The attention of the Chairman & Correspondent, SAP College, Vikarabad is invited to this office proceedings 2nd & 3rd cited wherein he was instructed to take action as per Rule 79 and 3(b) of A.P. Education Act, 1982. But he has failed to do so for the last 3 ½ months.
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> It has been represented vide reference 4th & 5th cited that reinstatement of the suspended person has not been made by the Chairman & Correspondent even though 2 months have already expired and another two months extended by the Management which is against the rules.
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> Hence, the Chairman & Correspondent, SAP College, Vikarabad is requested to reinstate Sri Gopala Kishan, Superintendent (under suspension from 8-7-2006) into service immediately without any further delay pending finalisation of enquiry, if any, as it is not desirable to keep the employee under suspension beyond 3 months as per rules.
>
> A compliance report should be sent in this regard, failure of which further action against the management will be taken

as per rules."

Armed with the direction contained in the above reproduced proceedings, respondent No.1 submitted joining report. The same was not accepted by the Principal of the college (appellant No.2 herein). Thereupon, respondent No.1 filed writ petition under Article 226 of the Constitution and prayed as under:

> " It is, therefore, prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the inaction of the 4th and 5th respondents in not reinstating the petitioner into service as a Superintendent with continuity of service and to pay all arrears of salary to the petitioner as per One Man Commission vide Rc.No.1188/OP.I-4/2005 dt.7-8-2006 and Revision pay scale as per G.O.(P) No.142, dt.6-6-2006 from the date of alleged suspension order dt.8-7-2006 in Rc.No.A3/Estt/06 to till the date of actual reinstatement in Sri Anantha Padmanabha Arts, Science and Commerce College, Vikarabad, Ranga Reddy District, which is under the control of 4th respondent management, as per proceedings No.976/A1/2006 dt.27-10-2006 issued by the 3rd respondent herein and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.
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> It is prayed that this Hon'ble Court may be pleased to direct the 4th and 5th respondents herein to forward the proposals of pay fixation of the pay scale of the petitioner to the 2nd respondent as per One Man Commission report i.e. Rc.No.1188/OP.I-4/2005 dt.7-8-2006 and as per G.O.(P) No.142 dated 6-6-2006, pending disposal of the main writ petition and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.
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> It is further prayed that this Hon'ble Court may be pleased to direct the 4th and 5th respondents herein to reinstate the petitioner into service as a Superintendent

forthwith as per proceedings Rc.No.976/A1/2006 dt.27-10-2006 issued by the 3rd respondent herein, pending disposal of the main writ petition and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

Along with the writ petition, respondent No.1 filed WPMP. No.2261 of 2007 for issue of an interim direction to non-petitioners No.4 and 5 (the appellants herein) to forthwith reinstate him as Superintendent.

On receipt of notice of the writ petition and the WPMP filed by respondent No.1, the appellants filed counter affidavit dated 4-2-2007 to controvert the petitioner's claim for reinstatement. However, without even adverting to the affidavit filed on behalf of the appellants and without noticing the presence of their advocate, the learned Single Judge passed the order, which is subject matter of challenge in this appeal and directed the appellants to reinstate respondent No.1. For better appreciation of the issue raised in the appeal, the impugned order is reproduced below:

"The respondents 4 and 5 are directed to reinstate the petitioner into service as Superintendent as per proceedings Rc.No.976/A1/2006 dated 27-10-2006 issued by the 3rd respondent, within a period of two weeks from the date of receipt of a copy of this order."

Shri Y. Rama Rao, learned counsel for the appellants argued that even though the order under challenge is interlocutory in nature, the same is liable to be set aside because the direction given by the learned Single Judge for reinstatement of respondent No. 1 has the effect of virtually allowing the writ petition. He further argued that the learned Single Judge could not have issued interim mandatory direction without adverting to the pleadings of the parties including

the counter affidavit filed on behalf of the appellants herein and taking note of the fact that the enquiry proceedings initiated against respondent No. 1 had been completed within two months of his suspension. Learned counsel invited our attention to enquiry report dated 6-9-2006 and emphasised that the enquiry had been completed within the period of two months prescribed under Section 79 (2) of the Andhra Pradesh Education Act, 1982 (for short, the 1982 Act').

Shri Sadu Rajeswara Reddy, learned counsel for respondent No.1 argued that the order under challenge does not suffer from any infirmity and, therefore, the same may not be disturbed, more so because no failure of justice has been occasioned. Learned counsel pointed out that the enquiry pending against respondent No.1 has not been completed and argued that the appellants cannot avoid the consequences envisaged under Section 79(3) of the 1982 Act. Lastly, he submitted that respondent No. 1 has already reached the age of 57 years six months and serious injury will be caused to his rights if he is continued under suspension for indefinite period.

We have considered the respective submissions. Ordinarily, in exercise of the power vested in it under Clause 15 of the Letters Patent, the Division Bench is extremely loath to interfere with an interlocutory order made by the learned Single Judge, but after having given our most anxious consideration to the facts of the case and the issue raised in the appeal, we are satisfied that the order impugned in the appeal suffers from a patent legal error and the refrain of the Division Bench to interfere with such an order will result in miscarriage of justice.

There is no dispute between the parties that the appellants had filed counter to the writ petition on 4-2-2007 along with large

number of documents to show that the enquiry instituted against respondent No. 1 had been completed on 6-9-2006. They specifically pleaded that after completion of enquiry, the provisions contained in Section 79(2) and (3) are not available to the writ petitioner and that order dated 27-10-2006 passed by respondent No.4 was legally untenable. The learned Single Judge did not even advert to the counter affidavit and enquiry report dated 6-9-2006 and ordered reinstatement of the writ petitioner (respondent No.1 herein) by erroneously assuming that the appellants had violated Section 79 (2) of the 1982 Act and, on that account, the deemed provision enshrined in Section 79 (3) had become effective.

Since the main writ petition is pending adjudication before the learned Single Judge, we do not want to express a conclusive opinion on the issue of violation of Section 79 (2), but we are prima facie convinced that the appellants did not contravene Section 79 (2) and, therefore, the provisions contained in Section 79 (3) could not be invoked for the purpose of ordering reinstatement of respondent No.1. A reading of letter dated 29-8-2006 sent by appellant No.1 to respondent No.4 and the accompanying enquiry report clearly show that the proceedings of enquiry had been completed on 6-9-2006 i.e. within two months of the initiation. Therefore, the provision contained in Section 79(3) of the 1982 Act for deemed reinstatement of the employee could not have been invoked by respondent No.4 and the learned Single Judge for ordering reinstatement of respondent No.1.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and WPMP.No.2261 of 2007 is dismissed.

However, keeping in view the fact that respondent No.1 is due to retire within next few months, we deem it proper to observe that it

will be in the interest of all that the management of the institution takes a final decision in the enquiry pending against respondent No. 1 as early as possible, but latest within six weeks from today.

As a sequel to disposal of the appeal, WAMP.No.313 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 22, 2007

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